

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

TED SPICE,

Plaintiff,

v.

INTERNAL REVENUE SERVICE, et. al.,

Defendants.

CASE NO. 20-5005 RJB

ORDER ON MOTION TO DISMISS

This matter comes before the Court on the Defendants Deutsche Bank Trust Company Americas and Nationstar Mortgage's ("Deutsche and Nationstar") Motion to Dismiss. Dkt. 48. The Court has considered the pleadings filed regarding the motion and the remaining record.

On January 6, 2020, the Plaintiff filed this case. Dkt. 1. On May 11, 2020, Deutsche and Nationstar moved for dismissal of this case against them, arguing that the Complaint fails to make any substantive allegations against them, identify a claim against them, or ask for any relief related to them. Dkt. 48.

A. MOTION TO DISMISS

Fed. R. Civ. P. 12(b)(6) motions to dismiss may be based on either the lack of a cognizable legal theory or the absence of sufficient facts alleged under a cognizable legal theory.

1 *Balistreri v. Pacifica Police Department*, 901 F.2d 696, 699 (9th Cir. 1990). Material allegations
2 are taken as admitted and the complaint is construed in the plaintiff's favor. *Keniston v. Roberts*,
3 717 F.2d 1295 (9th Cir. 1983).

4 Deutsche and Nationstar's motion to dismiss (Dkt. 48) should be granted. The Plaintiff
5 responded to the motion and does not oppose it. Dkt. 75. Further, the motion has merit. The
6 Plaintiff failed to allege sufficient facts against Deutsche and/or Nationstar to state a claim for
7 relief. They should be dismissed without prejudice.

8 **B. DEFENDANTS WHO HAVE NOT APPEARED**

9 The Court notes that Defendants Bank of America NA ("BOA"); Bank of New York
10 Mellon, as Trustee on behalf of the registered holders of Alternative Loan Trust 2006-OA3,
11 Mortgage Pass-through Certificates, Series 2006-OA3 formerly known as Bank of New York
12 ("Bank of NY"); GMAC Mortgage LLC ("GMAC"); and Ditech Financial LLC ("Ditech") have
13 not appeared in this case. The record does not reflect whether these parties have been properly
14 served.

15 This case was filed on January 6, 2020 – over six months ago. The Plaintiff has not
16 moved for default against BOA, Bank of NY, GMAC or Ditech. Based on the allegations and
17 claims in the Complaint, it is not clear whether he has stated a claim against any of these
18 Defendants or seeks any relief against them.

19 Aside from these Defendants (BOA, Bank of NY, GMAC and Ditech) and the United
20 States, all other Defendants in this case have been dismissed. The United States has a motion to
21 dismiss noted for consideration for this Friday, June 12, 2020.

22 During the six months that this case has been pending, the Plaintiff has taken no action on
23 the record regarding BOA, Bank of NY, GMAC or Ditech. It is not clear whether he intends to
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1 continue the case against them. To clarify the record, on or before June 12, 2020, the Plaintiff
2 should be ordered to inform the Court of whether he intends to continue the case against
3 Defendants BOA, Bank of NY, GMAC or Ditech.

4 **ORDER**

5 Therefore, it is hereby **ORDERED** that:

- 6 • Defendants Deutsche Bank Trust Company Americas and Nationstar Mortgage's
7 Motion to Dismiss (Dkt. 48) **IS GRANTED**;
- 8 • Deutsche Bank Trust Company Americas and Nationstar Mortgage **ARE**
9 **DISMISSED WITHOUT PREJUDICE**; and
- 10 • On or before **June 12, 2020**, the Plaintiff **SHALL INFORM** the Court of
11 whether he intends to continue the case against Defendants Bank of America NA;
12 Bank of New York Mellon, as Trustee on behalf of the registered holders of
13 Alternative Loan Trust 2006-OA3, Mortgage Pass-through Certificates, Series
14 2006-OA3 formerly known as Bank of New York; GMAC Mortgage LLC; and
15 Ditech Financial LLC.

16 The Clerk is directed to send uncertified copies of this Order to all counsel of record and
17 to any party appearing *pro se* at said party's last known address.

18 Dated this 9th day of June, 2020.

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20 ROBERT J. BRYAN
21 United States District Judge
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